

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LOC CHI DUONG,

Plaintiff,

v.

NANCY GONSALEZ, et al.,

Defendants.

No. 1:22-cv-01409-ADA-SKO (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(ECF No. 11)

ORDER DISMISSING ACTION AND  
DIRECTING CLERK OF COURT TO ENTER  
JUDGMENT AND CLOSE CASE

ORDER DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY

Petitioner Loc Chi Duong is a former immigration detainee proceeding with an action sounding in both habeas and civil rights. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 12, 2022, the assigned Magistrate Judge issued findings and recommendations to dismiss the petition for failure to state a claim. (ECF No. 11.) The findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. No objections have been filed, and the deadline to do so has expired.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the Court concludes that the findings and recommendations are supported by the record and proper analysis.

1 In addition, the Court declines to issue a certificate of appealability. A state prisoner  
2 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of  
3 his petition, and an appeal is only allowed in certain circumstances. *See Miller-El v. Cockrell*,  
4 537 U.S. 322, 335–36 (2003). The controlling statute in determining whether to issue a certificate  
5 of appealability is 28 U.S.C. § 2253, which provides as follows:

6 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
7 district judge, the final order shall be subject to review, on appeal, by the court of  
8 appeals for the circuit in which the proceeding is held.

9 (b) There shall be no right of appeal from a final order in a proceeding to test  
10 the validity of a warrant to remove to another district or place for commitment or  
11 trial a person charged with a criminal offense against the United States, or to test  
12 the validity of such person’s detention pending removal proceedings.

13 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
14 appeal may not be taken to the court of appeals from—

15 (A) the final order in a habeas corpus proceeding in which the  
16 detention complained of arises out of process issued by a State  
17 court; or

18 (B) the final order in a proceeding under section 2255.

19 (2) A certificate of appealability may issue under paragraph (1) only if the  
20 applicant has made a substantial showing of the denial of a constitutional  
21 right.

22 (3) The certificate of appealability under paragraph (1) shall indicate which  
23 specific issue or issues satisfy the showing required by paragraph (2).

24 If a court denies a petitioner’s petition, the court may only issue a certificate of  
25 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.  
26 *See* 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that  
27 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have  
28 been resolved in a different manner or that the issues presented were ‘adequate to deserve  
encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting  
*Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

In the present case, the Court finds that Petitioner has not made the required substantial  
showing of the denial of a constitutional right to justify the issuance of a certificate of  
appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not

entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus, the Court declines to issue a certificate of appealability.

Accordingly,

1. The findings and recommendations issued on December 12, 2022 (ECF No. 11), are adopted in full;
2. The petition for writ of habeas corpus is dismissed with prejudice;
3. The Clerk of Court is directed to enter judgment and close the case; and
4. The Court declines to issue a certificate of appealability.

This order terminates the action in its entirety.

IT IS SO ORDERED.

Dated: May 30, 2023

  
UNITED STATES DISTRICT JUDGE